

SEP 30 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 5988
DATE COMPLAINT FILED: 4/4/2008
DATE OF NOTIFICATION: 4/11/2008
LAST RESPONSE RECEIVED: 6/20/2008
DATE ACTIVATED: 6/3/2008
EXPIRATION OF SOL: 3/1/2013

COMPLAINANT: Minnesota Democratic-Farmer-Labor Party

RESPONDENT: American Future Fund

RELEVANT STATUTES: 2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(17)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 441b
2 U.S.C. § 441d(a) & (d)
26 U.S.C. § 501(c)(4)
11 C.F.R. § 100.22(b)
11 C.F.R. § 100.57
11 C.F.R. § 109.10
11 C.F.R. § 114.10
11 C.F.R. § 114.15

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: Internal Revenue Service

I. INTRODUCTION

This matter concerns allegations that the American Future Fund ("AFF"), an Iowa nonprofit corporation that has applied for tax exempt status under I.R.C. § 501(c)(4), has violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

Specifically, the complaint alleges that AFF aired a television advertisement in Minnesota containing express advocacy and, consequently, was required to register and report as a political committee with the Commission, file an independent expenditure report, and include appropriate disclaimers in the advertisement. In its response, AFF denies that the advertisement contains express advocacy and asserts that it was not required to register with the Commission as a political committee or to report the expenditures made for the advertisement.

As discussed further below, we believe the advertisement funded by AFF expressly advocated the election or defeat of a clearly identified candidate. See 11 C.F.R. § 100.22(b). Although AFF appears to have met the statutory threshold for political committee status by making over \$1,000 in expenditures on the "Independent" advertisement, the available information indicates that it does not have federal campaign activity as its major purpose and, thus, has not triggered political committee status. We therefore recommend that the Commission find no reason to believe that AFF violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee. Nevertheless, we recommend that the Commission find reason to believe that: (1) AFF violated 2 U.S.C. § 441b by making a corporate expenditure; (2) AFF violated 2 U.S.C. § 434(c) and 11 C.F.R. § 109.10 by failing to report its independent expenditure; and (3) AFF violated 2 U.S.C. §§ 441d(a) and (d) by failing to include the required disclaimer.

II. FACTUAL AND LEGAL ANALYSIS

A. FACTUAL BACKGROUND

1. Organizational Structure and Purpose

AFF is an Iowa nonprofit corporation registered with the Iowa Secretary of State. See Attachment 2, Articles of Incorporation (Aug. 7, 2007). As a nonprofit corporation, AFF has no

10044272838

1 members. *See id.*; *see also* Response at 7. According to its response, AFF submitted an
2 application for recognition of tax exempt status under I.R.C. § 501(c)(4) to the Internal Revenue
3 Service ("IRS") on March 18, 2008. *See* Response at 1.¹

4 It appears that AFF has only made public statements of its organizational purpose in its
5 Articles of Incorporation and its website. AFF's Articles of Incorporation, filed on August 7,
6 2007 with the Iowa Secretary of the State, sets forth the organization's goal "to further the
7 common good and general welfare of the citizens of the United States of America by educating
8 the citizens of the United States about public policy issues." *See* Attachment 2, Articles of
9 Incorporation. These goals were echoed in an April 7, 2008 press release announcing the launch
10 of its website, where AFF President Nicole Schlinger stated: "The American Future Fund was
11 formed as a mechanism to promote conservative, free market ideas, and to communicate them to
12 the public. . . . Conservative and free market principles are under direct attack by liberal groups
13 like MoveOn.org and Americans United for Change. It is imperative that there be a voice to
14 defend these principles and articulate a vision for bolstering America's global competitiveness."
15 *See* American Future Fund Website, [http://americanfuturefund.com/2008/04/07/american-future-](http://americanfuturefund.com/2008/04/07/american-future-fund-launches-website/)
16 [fund-launches-website/](http://americanfuturefund.com/2008/04/07/american-future-fund-launches-website/).

17 2. American Future Fund's Public Communications and Activity

18 On March 19, 2008, AFF began running a television advertisement titled "Independent"
19 in the media markets of Minneapolis and Mankato. The "Independent" ad ran for approximately
20 two weeks, *see* Complaint at 1, and during that time AFF purchased at least 178 spots on five
21 different television stations for an amount of at least \$132,920. *See* Polinaut: Exploring the

¹ The IRS has not yet issued a determination letter regarding AFF's application for exempt status. Based on the information from the response and the IRS website, *see Where is my exemption application*, <http://www.irs.gov/charities/article/0,,id=156733,00.html>, it is likely that AFF's application is still under review.

- 1 Universe of Politics, <http://minnesota.publicradio.org/collections/special/columns/polineut/>
2 (May 6, 2008). The ad contained a female announcer, images, and the following text:

Audio	Visual
ANNOUNCER: When the unthinkable happened, Senator Norm Coleman teamed with Amy Klobuchar to secure \$250 million to rebuild the 35W bridge. Coleman has worked with Republicans and Democrats to make college more affordable, expand opportunities for our soldiers and National Guard returning home, and crack down on predatory lenders. An independent voice for Minnesota: Norm Coleman. Call Norm Coleman and thank him for his agenda for Minnesota.	<p>Picture: Split-screen picture of 35W bridge collapse Text: "When the unthinkable happened . . ."</p> <p>Picture: Senator Coleman speaking Text: "Senator Norm Coleman Teamed With Senator Amy Klobuchar"</p> <p>Picture: Nighttime picture of 35W bridge collapse followed by animated picture of rebuilt 35W bridge Text: "Secured \$250 million to rebuild 35W bridge"</p> <p>Picture: Senator Coleman reaching out to onlookers at what appears to be a speech or convention Text: "Worked with Republicans & Democrats"</p> <p>Picture: A picture of what appears to be a university followed by a picture of students walking with a college professor Text: "Coleman Agenda for Minnesota Makes College More Affordable"</p> <p>Picture: A picture of a young man looking up from reading or writing, followed by a picture of four soldiers standing on top of a tank, silhouetted by a setting sun and orange-red sky Text: "Coleman Agenda for Minnesota Expand opportunities for Soldiers & National Guard"</p> <p>Picture: A picture of Senator Coleman at a hearing making gestures Text: "Coleman Agenda for Minnesota Crack down on predatory lenders"</p> <p>Picture: A picture of Senator Coleman in a barn coat shaking a constituent's hand followed by a picture of Senator Coleman in a suit shaking a constituent's hand Text: "An Independent Voice for Minnesota"</p> <p>Picture: Picture of Senator Coleman on the left-hand side of the screen Text: "Call Senator Norm Coleman Thank him for his agenda for Minnesota 651-645-0323 PAID FOR BY AMERICAN FUTURE FUND"</p>

- 3 On the same day that AFF began to air "Independent," Senator Coleman made a brief
4 appearance before the Minnesota Capitol press corps to discuss the upcoming Senate race and
5 criticize potential Democratic challenger Al Franken. Stassen-Berger, Rachel E., *Coleman Rips*
6 *Franken as 'Mean, Angry': Senator Kicks Off Re-Election Campaign Saying He's the Uinter,*
7 ST. PAUL PIONEER PRESS, Mar. 20, 2008. Although Minnesota Congressional and Senate

10044272840

1 primaries are not until September, and Senator Coleman appears to be uncontested in the
2 Republican primary, Senator Coleman officially launched his campaign for reelection to the
3 United States Senate on March 26, 2008, a week after AFF began airing "Independent." See
4 *Coleman prepares to announce Senate reelection bid*, ASSOCIATED PRESS, (Mar. 26, 2008).

5 Although the March 19, 2008 airing of "Independent" appears to be AFF's first public
6 communication, the group has also issued numerous press releases and communications on a
7 variety of issues. Such items include:

- 8 • An April 16, 2008 letter supporting the Columbian Trade Protection Act that was
9 currently pending in the Senate;
- 10 • An April 23, 2008 paid advertisement in Roll Call calling for the passage of the
11 bipartisan FISA bill;
- 12 • An April 28, 2008 release of survey results from Louisiana that found
13 "desperately low congressional approval ratings and growing interest in taxes and
14 economic issues;"
- 15 • An April 28, 2008 press release calling for a "crack down" on tax evasion;
- 16 • An April 30, 2008 letter to Speaker Nancy Pelosi calling for a the House to vote
17 on the Columbian Trade Protection Act;
- 18 • A May 2, 2008 press release criticizing the Minnesota state legislature for passing
19 the Employee Free Choice Act;
- 20 • A May 8, 2008 release of national poll results;
- 21 • A May 22, 2008 release of poll results focusing on the gas tax;
- 22 • A May 28, 2008 press release supporting a recent Wall Street Journal op-ed by
23 Congressman Paul Ryan (R-WI) that proposes Social Security, Medicare, and
24 Medicaid reform; and
- 25 • A May 29, 2008 press release supporting a recent American Spectator article
26 about "entitlement" reform.

27 See American Future Fund Website, <http://www.americanfuturefund.com/topics/press-releases/>.

10044272841

1 AFF has also aired several radio and television advertisements that focus on energy issues
2 and feature sitting Members of Congress or Senators. These advertisements have focused on
3 allowing offshore drilling, calling on Senators Reid, McConnell, and Sununu to take action on
4 S. 3202, the Gas Price Reduction Act, as well as asking Congressman Mark Udall to vote on
5 H.R. 6018, a similar matter pending in the House of Representatives.² See generally, American
6 Future Fund Website, <http://americanfuturefund.com>.

7 B. LEGAL ANALYSIS

8 1. Political Committee Status

9
10 The Act defines a "political committee" as any committee, club, association, or other
11 group of persons that receives "contributions" or makes "expenditures" for the purpose of
12 influencing a federal election which aggregate in excess of \$1,000 during a calendar year.
13 2 U.S.C. § 431(4)(A). To address overbreadth concerns, the Supreme Court has held that only
14 organizations whose major purpose is campaign activity can potentially qualify as political
15 committees under the Act. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v.*
16 *Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL"). The Commission has long
17 applied the Court's major purpose test in determining whether an organization is a "political
18 committee" under the Act, and it interprets that test as limited to organizations whose major
19 purpose is federal campaign activity. See Political Committee Status: Supplemental Explanation
20 and Justification, 72 Fed. Reg. 5595, 5597, 5601 (Feb. 7, 2007); see also FEC's Mem. in Support

² The advertisement featuring Senator John Sununu also included former Governor Jeanne Shaheen who was a participant in the New Hampshire primary. For both the Udall and Sununu/Shahen television advertisements, AFF filed an FEC Form 9 and disclosed the communications under 11 C.F.R. § 114.15. Both of these advertisements ran within 30 days of the candidates' respective primaries, which was August 12, 2008 for the Colorado primary and September 9, 2008 for New Hampshire primary.

10044272842

1 of Its Second Mot. for Summ. J., *Emily's List v. FEC*, Civ. No. 05-0049 at 21 (D.D.C. Oct. 9,
2 2007).

3 The term "expenditure" is defined to include "any purchase, payment, distribution, loan,
4 advance, deposit, or gift of money or anything of value, made by any person for the purpose of
5 influencing any election for Federal Office." 2 U.S.C. § 431(9)(A)(i). The term "contribution" is
6 defined to include "any gift, subscription, loan, advance, or deposit of money or anything of
7 value made by any person for the purpose of influencing any election for Federal office."
8 2 U.S.C. § 431(8)(A)(i). Further, Commission regulations provide that funds received in
9 response to any communication are contributions to the person making the communication "if the
10 communication indicates that any portion of the funds received will be used to support or oppose
11 the election of a clearly identified Federal candidate." 11 C.F.R. § 100.57.

12 a. American Future Fund Appears to Have Exceeded the Statutory
13 Threshold for Expenditures by Spending Over \$1,000 for
14 Communications Expressly Advocating the Election or Defeat of a
15 Clearly Identified Candidate
16

17 In determining whether an organization makes an expenditure, the Commission "analyzes
18 whether expenditures for any of an organization's communications made independently of a
19 candidate constitute express advocacy either under 11 C.F.R. § 100.22(a), or the broader
20 definition at 11 C.F.R. § 100.22(b)." Political Committee Status: Supplemental Explanation and
21 Justification, 72 Fed. Reg. at 5606. Under the Commission's regulations, a communication
22 expressly advocates the election or defeat of a clearly identified candidate when it uses phrases
23 such as "vote for the President," "re-elect your Congressman," or "Smith for Congress," or uses
24 campaign slogans or individual words, "which in context can have no other reasonable meaning
25 than to urge the election or defeat of one or more clearly identified candidate(s)...." See 11

10044272843

1 C.F.R. § 100.22(a); *Buckley v. Valeo*, 424 U.S. 1, 44 n.52 (1976); *see also* *FEC v. Massachusetts*
2 *Citizens for Life, Inc.*, 479 U.S. 238, 249 (1986). The second part of this regulation encompasses
3 a communication that, when taken as a whole or with limited reference to external events, "could
4 only be interpreted by a reasonable person as containing advocacy of the election or defeat of one
5 or more clearly identified candidate(s) because" it contains an "electoral portion" that is
6 "unmistakable, unambiguous, and suggestive of only one meaning" and "reasonable minds could
7 not differ as to whether it encourages actions to elect or defeat one or more clearly identified
8 candidate(s) or encourages some other kind of action." *See* 11 C.F.R. § 100.22(b). In its
9 discussion of then-newly promulgated section 100.22, the Commission stated that
10 "communications discussing or commenting on a candidate's character, qualifications or
11 accomplishments are considered express advocacy under new section 100.22(b) if, in context,
12 they have no other reasonable meaning than to encourage actions to elect or defeat the candidate
13 in question." *Express Advocacy; Independent Expenditures; Corporate and Labor Organization*
14 *Expenditures: Explanation and Justification*, 60 Fed. Reg. 35292, 35295 (July 6, 1995).³

15 "Independent" qualifies as express advocacy under section 100.22(b) because the
16 advertisement as a whole lacks a specific legislative focus, is candidate centered, and requests
17 electoral support by characterizing Coleman as "An Independent Voice for Minnesota." Where a
18 public communication features a single, specific legislative issue, the Commission previously has

³ In *FEC v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2667 (2007) ("*WRTL*"), the Supreme Court held that "an ad is the functional equivalent of express advocacy," and thus constitutionally regulable as an electioneering communication under 2 U.S.C. §441b(b)(2), if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." Although 11 C.F.R. § 100.22 was not at issue in the matter, the Court examined whether the ad had "indicia of express advocacy" such as the "mention [of] an election, candidacy, political party, or challenger" or whether it "take[s] a position on a candidate's character, qualifications, or fitness for office." *Id.* The Commission subsequently incorporated the principles set forth in the *WRTL* opinion into its regulations governing permissible uses of corporate and labor organization funds for electioneering communications at 11 C.F.R. § 114.15. *See* Final Rule on Electioneering Communications, 72 Fed. Reg. 72899, 72914 (Dec. 26, 2007).

1 explained that the legislative character of the advertisement may provide a reasonable
2 interpretation other than supporting or opposing the featured candidate. *Cf.*, Final Rule on
3 Electioneering Communications: Explanation and Justification, 72 Fed. Reg. 72,899, 72,908
4 (Dec. 26, 2007) (explaining that the *Ganske* advertisement's focus on a single environmental
5 issue was content that would support a determination that the advertisement had an interpretation
6 other than as an appeal to vote against Representative Ganske, rendering the advertisement a
7 permissible electioneering communication under the general exemption in 11 C.F.R.
8 § 114.15(a)).

9 Rather than maintaining a specific legislative focus, "Independent" presents a collection
10 of issues addressed by Senator Coleman that range from the collapse of the I-35W bridge to
11 predatory lending practices, highlighting Senator Coleman's past stances with respect to these
12 issues and using the Senator himself to link the issues together. By referencing these wide-
13 ranging issues, the advertisement focuses on Coleman's qualifications, accomplishments and
14 fitness for office, rather than advocates any particular legislative action or policy stance.

15 In light of the candidate-centered nature of "Independent" and the focus on Coleman's
16 accomplishments and qualifications for public office, the advertisement as a whole, and the
17 phrase "An Independent Voice for Minnesota" in particular, can have no other reasonable
18 interpretation than as a call to vote for Senator Coleman. The tagline asking viewers to "thank"
19 Senator Coleman does not negate the electoral message of the advertisement such that it would
20 cause reasonable minds to differ. *See* MURs 5910/5694 (Americans for Jobs Security, Inc.),
21 First General Counsel's Report (Feb. 6, 2008) (concluding that advertisement asking the public
22 to "thank" candidate for "being a conservative" is express advocacy).

10044272845

1 Despite the Respondent's assertion to the contrary, the "Independent" advertisement does
2 not fail as express advocacy simply because it uses the word "thank." AFF claims that the
3 "Independent" advertisement is similar to language displayed on banners in MURs 5779/5805
4 (City of Santa Clarita), in which the Commission determined that a banner stating "Thank you
5 Buck for H.R. 5471! – No Mega Mining in Soldad Canyon" was not express advocacy. There,
6 however, the use of "thank" was linked to a specific issue and a specific piece of legislation, and
7 the banner did not include any statements that may be construed as supporting or opposing a
8 clearly identified candidate. Here, by contrast, the "Independent" advertisement does not link the
9 call to action to a specific vote or ask Senator Coleman to take a prospective stance on a specific
10 issue. In so doing, the advertisement cannot be reasonably interpreted as anything but a request
11 to support Coleman based on his prior record.

12 Based on the content of the "Independent" advertisement, we believe that AFF has met
13 the statutory threshold for expenditures by spending over \$1,000 in communications expressly
14 advocating the election of a clearly identified candidate.⁴

15 b. American Future Fund's Major Purpose Does *Not* Appear to be
16 Federal Campaign Activity
17

18 An organization's "major purpose" may be established through public statements of its
19 purpose. *See, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004) (court found
20 organization evidenced its "major purpose" through its own materials which stated the
21 organization's goal of supporting the election of Republican Party candidates for federal office
22 and through efforts to get prospective donors to consider supporting federal candidates); *FEC v.*
23 *GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) ("organization's [major] purpose may be

⁴ At this time, we have no information indicating that AFF may have received contributions under 11 C.F.R. § 100.57, thereby triggering the \$1,000 threshold for political committee status through the receipt of contributions.

1 evidenced by its public statements of its purpose or by other means. . . ."). An organization also
2 can satisfy *Buckley's* "major purpose" test through sufficient spending on campaign activity.
3 *MCFL*, 479 U.S. at 262-264 (political committee status would be conferred on MCFL if its
4 independent spending were to become so extensive that the group's major purpose may be
5 regarded as campaign activity).⁵

6 Although it appears that AFF has made over \$1,000 in expenditures by producing and
7 airing "Independent," publicly available information suggests that AFF's major purpose may not
8 be federal campaign activity. AFF's only publicly stated purpose is "to promote conservative,
9 free market ideas." See American Future Fund Website, <http://americanfuturefund>
10 [.com/2008/04/07/american-future-fund-launches-website](http://americanfuturefund.com/2008/04/07/american-future-fund-launches-website), see also Attachment 2, Articles of
11 Incorporation. Moreover, neither the officers nor directors of AFF have made any statements to
12 the press indicating that the organization's purpose is to influence federal elections.

13 Additionally, we lack information regarding AFF's spending on federal campaign activity
14 because, as an applicant for 501(c)(4) status with the IRS, its financial records are not available
15 for public inspection. Although we do not have access to AFF's financial records, the
16 organization has engaged in a wide range of activities that are not directly related to federal
17 campaign activity, including supporting the bipartisan FISA bill and Columbian Trade Protection
18 Act, as well as engaging in polling on issues such as entitlement reform and the gas tax. See Part
19 II.A.2., *infra*. AFF's involvement in these activities, combined with the fact that "Independent"

⁵ The Commission has consistently applied this standard in past matters. See MUR 5540 (The Media Fund), MUR 5541 (November Fund), MUR 5542 (Texans for Truth), and MURs 5577/5620 (National Association of Realtors - 527 Fund); see also Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. at 5601-02.

10044272847

1 is the only public communication by AFF supporting a federal candidate,⁶ suggests that AFF's
2 major purpose is not federal campaign activity. Although AFF has aired several advertisements
3 featuring legislative issues in states with tightly contested Senate races, *see* Part II.A.2., *infra*,
4 this conduct does not appear to tip the balance in favor of concluding that AFF's major purpose
5 is federal campaign activity based on the other facts available at this time. Accordingly, we
6 recommend that the Commission find no reason to believe that AFF violated 2 U.S.C. §§ 433
7 and 434 by failing to register and report as a political committee.

8 2. Prohibited Corporate Expenditure

9 The Act prohibits a corporate entity from making any expenditure in connection with a
10 federal election. 2 U.S.C. § 441b(a). As a nonprofit corporation registered with the Secretary of
11 State of Iowa, therefore, AFF is prohibited from making expenditures. *See* 2 U.S.C. § 441b(a).
12 Because AFF's advertisement contains express advocacy under 11 C.F.R. § 100.22(b), *see* Part
13 II.B.1.a., *supra*, AFF has made a prohibited expenditure.⁷ Accordingly, we recommend that the

⁶ The AFF website is a joint website between American Future Fund and American Future Fund Political Action ("AFF PA"), which is a political committee that registered with the Commission on May 7, 2008. AFF PA has produced Internet videos that are critical of several federal candidates. In particular, AFF PA has produced Internet videos that have criticized Al Franken for his past business dealings, called on Senator Barack Obama to fire a controversial figure from his campaign staff, and accused Senator Mary Landrieu of being involved in corruption. *See* <http://americanfuturefund.com/author/aff-political-action/>. Despite these Internet videos by AFF PA, the "Independent" advertisement appears to be the only communication that AFF has produced that actively calls for the support of a federal candidate.

⁷ In *MCFL*, 479 U.S. 238, the Supreme Court held that certain nonprofit corporations were not subject to 2 U.S.C. § 441b(a)'s general prohibition against corporate expenditures. Section 114.10 of the Commission's regulations implements the Supreme Court's decision in *MCFL* and refers to such exempt organizations as "qualified nonprofit corporations" ("QNCs"). In order to qualify as a QNC under the Commission's regulations, a corporation must (1) have as its only express purpose the promotion of political ideas; (2) not engage in business activities; (3) not have shareholders or persons receiving other similar benefits; (4) not have been established by a business corporation or labor organization, or directly or indirectly accept donations from business corporations or labor organizations; and (5) be an organization described in 26 U.S.C. § 501(c)(4). 11 C.F.R. § 114.10(e). Although AFF is a nonprofit corporation, it has not filed a certification for QNC status with the Commission as required by 11 C.F.R. § 114.10(e), nor has it claimed exemption from the prohibitions of section 441b(a) pursuant to *MCFL* in its response. Moreover, given the lack of publicly available information regarding its contributions, we have no information suggesting that it qualifies for either QNC or *MCFL* status.

10044272848

Commission find reason to believe that American Future Fund violated 2 U.S.C. § 441b(a) by making prohibited expenditures in connection with the "Independent" advertisement.

3. Reporting of Independent Expenditure

An independent expenditure is any expenditure that expressly advocates the election or defeat of a clearly identified candidate and is not made in concert with a candidate, a political party committee, or their respective agents. 2 U.S.C. § 431(17). Under the Act, every person who makes independent expenditures in excess of \$250 must file a report that discloses information on its expenditures and identify each person who made a contribution in excess of \$200 in a calendar year and each person who gave more than \$200 for the purpose of furthering an independent expenditure. *See* 2 U.S.C. § 434(c). In addition, every person making an independent expenditure aggregating \$10,000 or more up to the 20th day before an election must report the independent expenditures on FEC Form 5, which must be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the communication is publicly distributed. *See* 11 C.F.R. § 109.10.

The "Independent" advertisement was first aired by AFF on March 19, 2008, and it appears that AFF spent at least \$132,920 on the advertising buy. We have no information, either from the complaint or publicly available sources, suggesting that the "Independent" advertisement was a coordinated communication. AFF has not filed a Form 5 or its equivalent with the Commission and was required to do so by March 21, 2008 at 11:59 p.m. Eastern Standard/Daylight Time. Accordingly, we recommend that the Commission find reason to believe that American Future Fund violated 2 U.S.C. § 434(c) and 11 C.F.R. § 109.10 by failing to report its independent expenditures to the Commission.

4. Advertisement Disclaimers

AFF was required to comply with the disclaimer provisions of 2 U.S.C. § 441d because the "Independent" advertisement contained express advocacy. The Act requires that persons making disbursements for communications containing express advocacy provide a disclaimer as specified in the statute and regulations. 2 U.S.C. § 441d. More specifically, communications that are not authorized by a candidate are required to "clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication [was] not authorized by any candidate or the candidate's committee." 2 U.S.C. § 441d(a)(3). In addition, a television communication must include the statement "' _____ is responsible for the content of this advertising' (with the blank to be filled in with the name of the political committee or other person paying for the communication and the name of any connected organization of the payor)." 2 U.S.C. § 441d(d)(2). Further, the communication must be "conveyed by an unobscured, full-screen view of a representative of the political committee or other person making the statement, or by a representative of such political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds." *Id.*

In its "Independent" advertisement, AFF failed to include both of the disclaimers required by 2 U.S.C. § 441d(a)(3) and (d)(2). Neither the street address, telephone number, or World Wide Web address of AFF, nor the required audio statement were included in the "Independent" advertisement. Accordingly, we recommend that the Commission find reason to believe that American Future Fund violated 2 U.S.C. §§ 441d(a)(3) and (d)(2) by failing to include the required disclaimers.

10044272850

IV. RECOMMENDATIONS


1. Find reason to believe that American Future Fund violated 2 U.S.C. § 441b(a).
 2. Find reason to believe that American Future Fund violated 2 U.S.C. § 434(c) and 11 C.F.R. § 109.10.
 3. Find reason to believe that American Future Fund violated 2 U.S.C. §§ 441d(a)(3) and (d)(2).
 4. Find no reason to believe that American Future Fund violated 2 U.S.C. §§ 433 and 434.
 5. Approve the attached Factual and Legal Analysis.
-

7. Approve the appropriate letters.

Date 9/30/2008


Thomasenia P. Duncan
General Counsel


Ann Marie Terzaken
Associate General Counsel for Enforcement


Julie K. McConnell
Assistant General Counsel


William A. Powers
Attorney

2. Articles of Incorporation, American Future Fund